City of Lafayette Staff Report

To: City Council

From: Mike Moran, Associate Engineer

Date Written: April 3, 2009

Meeting Date: April 13, 2009

Subject: 1209 Cambridge Drive – Retroactive Request for Two Stone-Clad Pillars with Lights that Encroach into the Public Right-of-Way

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Introduction

Stephen and Courtney Anderson own the property at 1209 Cambridge Drive. The Andersons are requesting permission to maintain two recently-constructed stone-clad columns with lights. These additions will require an encroachment agreement because they have been placed in the public right of way. Staff recommends approval of the agreement.

Discussion

The City's right-of-way along the subject property is approximately 9 feet behind the existing concrete curb on Cambridge Drive. The attached plan (Figure 1) shows the locations of the two columns (with dimensions), the approximate property line, and the existing concrete curb. Figure 2 shows a photograph of the two lighted columns.

Per staff's discussion with Mrs. Anderson, the columns were added as part of a larger remodeling project for their home. The Anderson's did take out an encroachment permit to construct their new driveway, but they were unaware that a permit would also be required for the columns. The columns are typical for their neighborhood and match the design and color elevation of their home which underwent design review by the City. One of the columns houses their mailbox and the other column houses an address placard. The lighting helps illuminate the front walk and provides safer access and egress at night.

Fiscal Impact

None

Recommendation

Approve the encroachment into the City right of way along the property of 1209 Cambridge Drive and authorize the Mayor to execute an encroachment agreement with the applicant.

Attachment: Agreement for 1209 Cambridge Drive

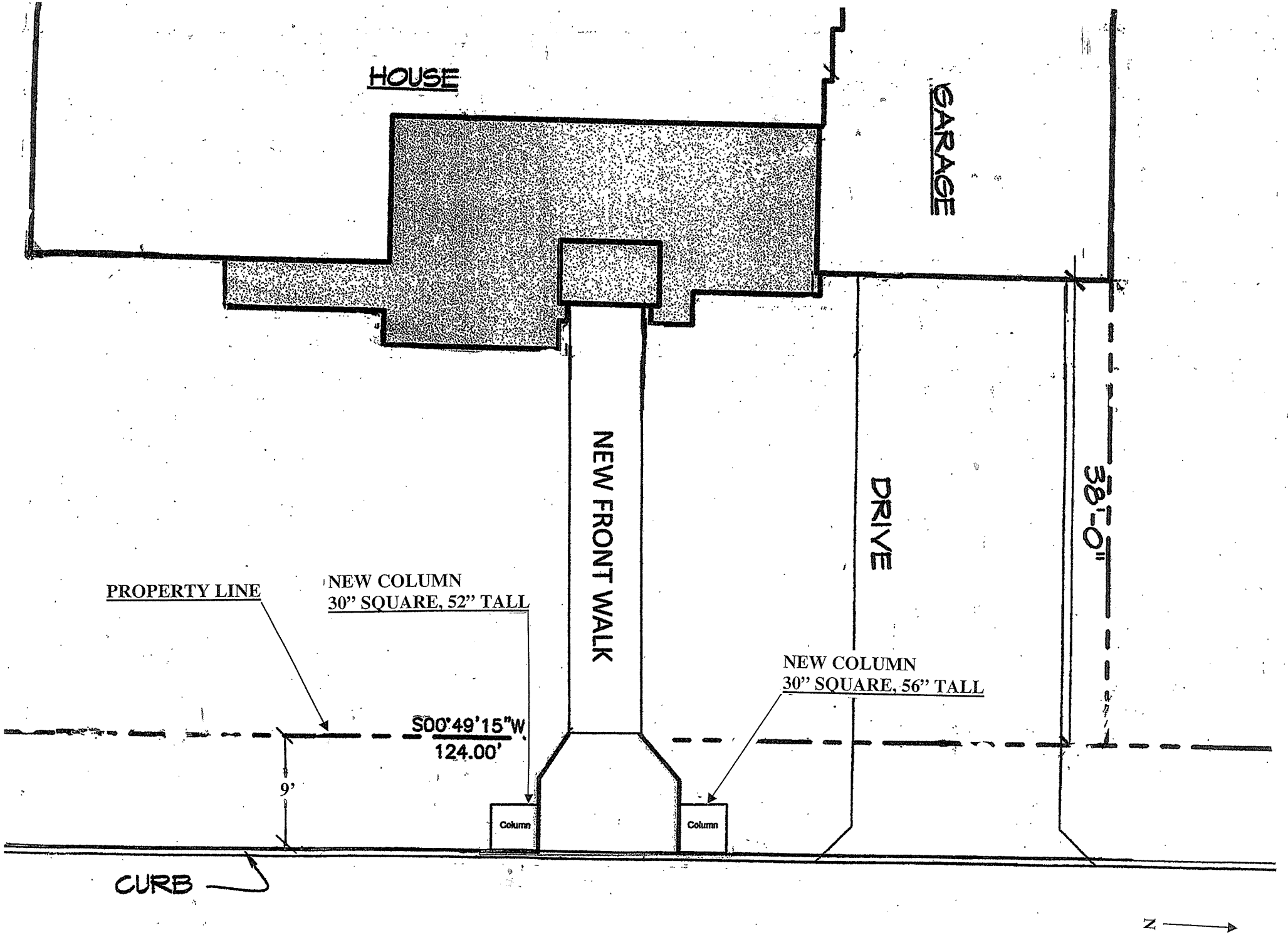
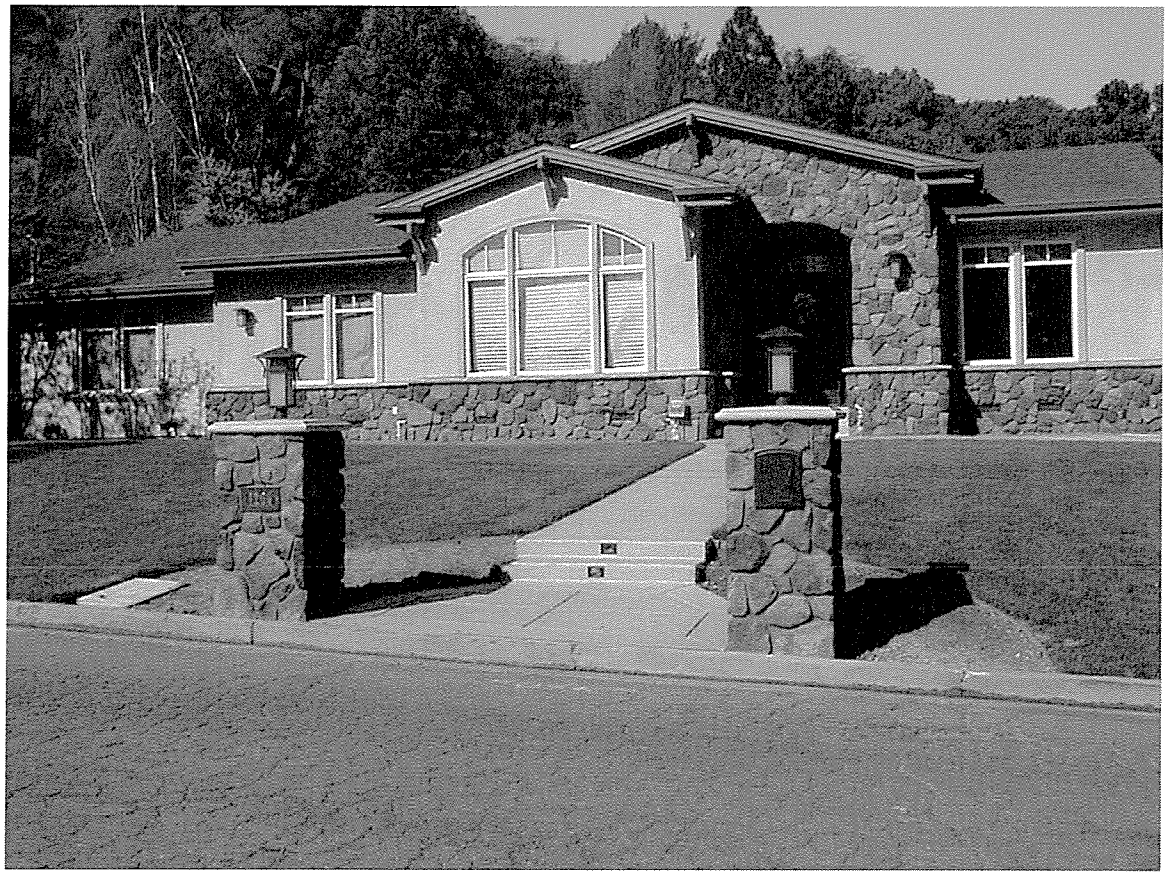


FIGURE 1

STONE COLUMNS IN FRONT OF 1209 CAMBRIDGE DRIVE



Two New Stone-Clad Pillars with Lights in Front of
1209 Cambridge Drive

FIGURE 2

When Recorded Return To:)
)
City Clerk)
City of Lafayette)
3675 Mt. Diablo Blvd., Suite 210)
Lafayette, CA 94549)

AGREEMENT

Encroachment of two stone columns with lights within the Public Right-of-Way along 1209 Cambridge Drive in Lafayette, California.

This Agreement is entered into on April 13, 2009 between Courtney Anderson "Property Owner" and the City of Lafayette, a municipal corporation "City".

RECITALS

This agreement is predicated upon the following facts:

A. Property Owner owns the residential property located at 1209 Cambridge Drive Lafayette, California, APN 2461820017 ("the Property"). The Property is more particularly described in Exhibit "A".

B. Property Owner seeks an encroachment permit to retroactively permit two stone columns with lights which encroach into the public right-of-way along 1209 Cambridge Drive. In connection with this request for an agreement, Property Owner has submitted plans (Figure 1) to the City showing the locations and dimensions of the two columns.

C. City is willing to grant Property Owner an encroachment permit in consideration of Property Owner agreeing to the terms and conditions hereafter set forth.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Permitted Encroachment of two stone columns with lights

Property Owner is permitted to maintain the two newly constructed stone columns with lights that encroach into the public right-of-way along 1209 Cambridge Drive, subject to obtaining any building permit which may otherwise be required by the Uniform Building Code.

This encroachment agreement is not a building permit and does not grant retroactive permission to construct without a separate building permit, if required by the Uniform Building Code adopted by reference of the Lafayette Municipal Code.

2. Risk of Damage and Indemnification.

Property Owner assumes all risk of damage to land and improvements owned by Property Owner, and all risk of other damage to the City or a third party alleged to be caused or contributed to by the placement, permitting, or maintenance of the lighted columns within the right-of-way as installed and maintained by the Property Owner. Property Owner also assumes the risk of damage to the lighted columns.

If the City, its officers, agents or employees are named in any action for damages or inverse condemnation in which it is alleged that the lighted columns permitted as a result of the issuance of the encroachment permit by the City is the cause of injury to persons or property or the cause of the "taking" of property, Property Owner shall defend, indemnify and hold harmless the City, its officers, agents and employees from damages, claims of damage or the amount of a "taking" including reasonable attorney's fees, alleged to have resulted from the location of the lighted columns within the right-of-way area by the issuance of the encroachment permit.

3. Insurance.

Property Owner acknowledges s/he maintain homeowners insurance and property damage insurance in the amount of at least $300,000 per occurrence covering the encroachment, insuring against liability for damage to property and for injury to or death of any person as a result of the placement or condition of the lighted columns. Property Owner shall furnish the City with satisfactory evidence of the insurance and evidence that the carrier is required to give the City at least 10 days notice in advance of the cancellation or reduction in coverage of the policy.

4. Warranty.

Property Owner warrants that as of the date of this Agreement, they are the lawful owners in fee simple of the Property described in Exhibit "A".

5. Duty to Maintain

Property Owner is responsible for maintaining the lighted columns described in Paragraph 1. Property Owner shall maintain the lighted columns in a safe and attractive condition as an encroachment within the City's right-of-way area. The lighted columns may not be modified or otherwise redesigned and reconstructed without prior City approval.

6. City May Maintain or Remove.

If Property Owner fails to meet the standard necessary to maintain the lighted columns the City may give written notice of the deficiency to Property Owner who shall have 20 days to make necessary correction, unless the deficiency is deemed by the City to impair sight distance of adjacent vehicular traffic, in which case the correction shall be made immediately. If the correction is not made within time allowed under this paragraph, the City may elect to take the steps necessary to maintain the lighted clolumns, or remove the encroachment entirely. To do this, the City shall serve a notice of its intent for this purpose. The City shall either personally serve the notice upon Property Owner or mail a copy of it by certified mail at Property Owners last known address or as shown on the tax rolls at least 15 days in advance of the date when it intends to take steps to maintain or remove the lighted columns, however, if the City deems the maintenance or removal to be necessary in order to correct a sight distance deficiency for adjacent vehicular traffic, it shall only be required to take reasonable steps to so notify Property Owners 24 hours in advance of the date it intends to perform the maintenance or removal. For this purpose, the City may perform such work, as it considers reasonably necessary and proper to restore and maintain or remove the encroachment. The City may act either through its own employees or through an independent contractor.

7. City's Costs of Maintenance or Removal a Lien.

If the City incurs costs in maintaining or removing the lighted columns which encroach after following the procedure set forth in paragraph 6, the City shall make demand upon Property Owner for payment. If Property Owner fails to pay the costs incurred by the City within 30 days of the date demand is made, the City may make the costs a lien upon the real property described in Exhibit "A"

by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 10 percent a year until paid.

8. Additional Remedies.

The City may as an alternative to the lien procedure set forth in Paragraph 7 bring legal action to collect the sums due as the result of the making of expenditures for restoration and maintenance or removal of the lighted columns. Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, Property Owner is responsible for payment to the City of a reasonable sum as attorneys' fees and court costs, together with interest from the date which is 30 days after the City has given its notice under paragraph 7.

9. Revocation.

City may revoke the encroachment permit at any time by 1) giving Property Owners 30 days prior written notice of the intention to revoke and 2) a majority vote of City Council to revoke the permit for any public purpose. In the event of revocation, within 60 days of the date of notice of Council's decision to revoke the permit, Property Owners agree to remove at their expense the lighted columns described in paragraph 1, which encroach in the right-of-way area.

10. Notices.

Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed:

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

Notices to Property Owner shall be addressed:

Courtney Anderson
1209 Cambridge Drive
Lafayette, CA 94549

When the Property Owner(s) cease to be the owners they shall file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so the subsequent grantee is charged with the obligation under this Agreement.

11. Miscellaneous Terms and Provisions.

(a) If any provision of this Agreement is adjudged invalid, the remaining provisions of it are not affected.

(b) Notice to Property Owners shall be considered to have been given to each party when sent to the address above stated.

(c) This writing, together with the encroachment permit and related documents is the full, final and exclusive statement of the Agreement of the parties.

(d) Property Owner appoints City it's attorney-in-fact to do all acts and things that the City considers necessary to restore or maintain the lighted columns.

(e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.

(f) The obligations upon the parties signing this Agreement terminate personally as to them when they convey their interest in the property and file for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner takes title subject to the requirements of this Agreement.

12. Agreement Attaches To Land.

This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETTE

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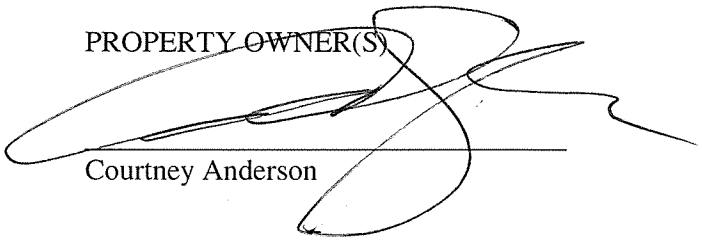
Steven B. Falk, City Manager

PROPERTY OWNER(S)



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Courtney Anderson

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* Notarial Acknowledgment Required.

ATTEST:

_____

Joanne Robbins, City Clerk

Escrow No. 9202965 -JMR

LEGAL DESCRIPTION EXHIBIT A

202172

CITY OF LAFAYETTE

LOT 4, AS DESIGNATED ON THE MAP OF TRACT NO. 2687, WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, ON OCTOBER 22, 1959, IN VOLUME 75 OF MAPS, AT PAGE 30.

ASSESSOR'S PARCEL NO. 246-182-001

END OF DOCUMENT

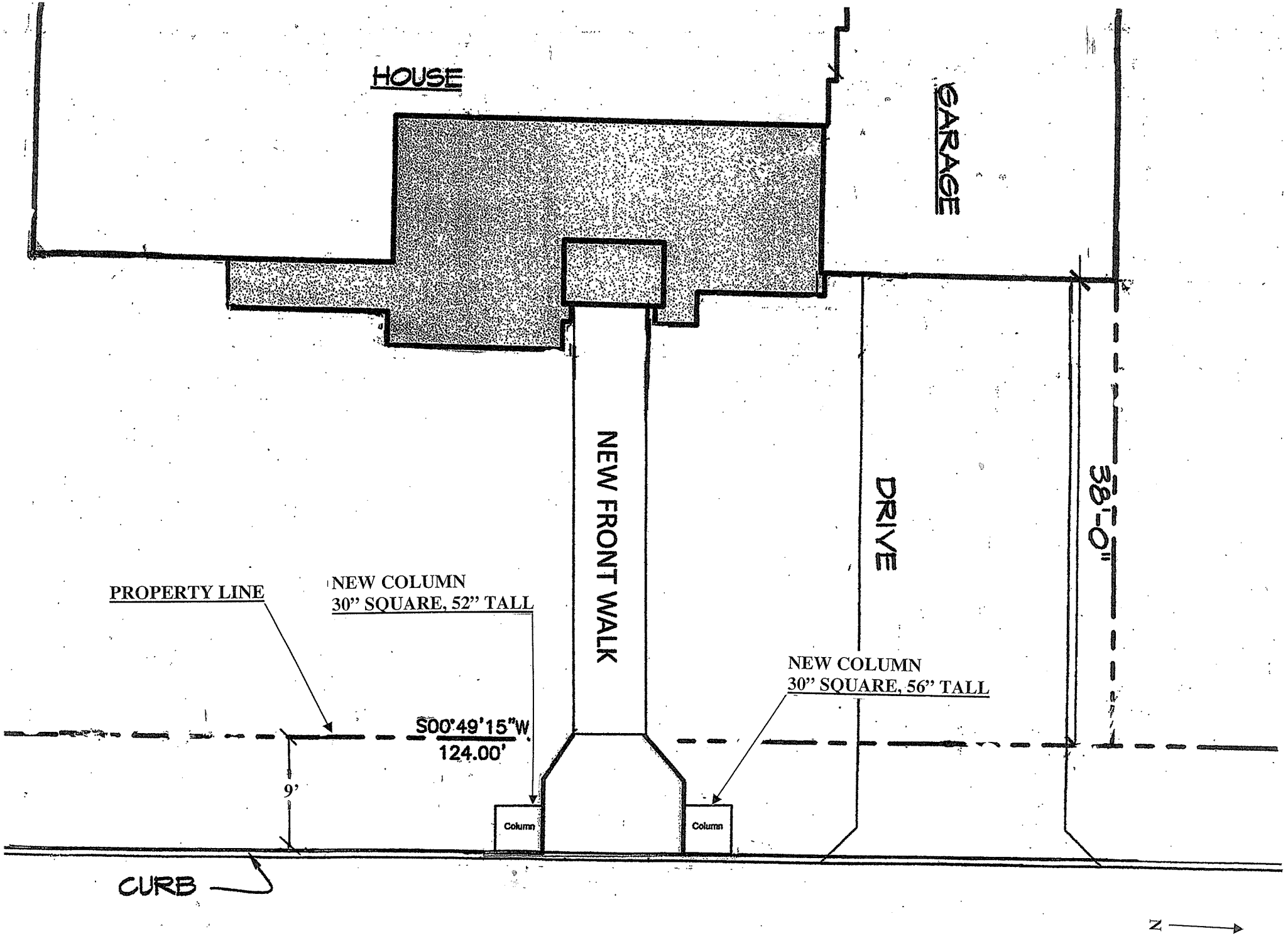

FIGURE 1

STONE COLUMNS IN FRONT OF 1209 CAMBRIDGE DRIVE

ACKNOWLEDGMENT

State of California
County of Contra Costa)

On April 3, 2009 before me, Joanne Lee Robbins, notary
(insert name and title of the officer)

personally appeared Courtney Anderson,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

ESI1 JOANNE LEE ROBBINS COMM. #1834010 Notary Public-California CONTRA COSTA COUNTY My Comm. Exp. FEB 10, 2013 ESI1

Signature Joanne Lee Robbins (Seal)